

1 October 1, 1991, the following amendment of the Board's Final
2 Findings, Conclusions and Order is hereby ORDERED:

3 Conclusion of Law VIII at p. 28 is amended to add Condition No.
4 11 as follows:

5 The parties shall comply with an Agreement entered
6 into between the Jamestown Klallam Tribe and the
7 Gunstone Family, so far as it applies to each
8 party, attached hereto as Exhibit No. 1. The
9 Agreement will produce no new enforcement
obligations for Clallam County but may be enforced
by the Gunstones or the Tribe under, inter alia,
the Shoreline Management Act.

10 DONE at Lacey, WA, this 8th day of ~~December~~ ^{January}, 1991.

12 SHORELINES HEARINGS BOARD

13 Harold S. Zimmerman (R.M.)
14 HAROLD S. ZIMMERMAN, Chairman

15 Judith A. Bendor
16 JUDITH A. BENDOR, Member

17 Annette S. McGee
18 ANNETTE S. MCGEE, Member

19 Nancy Burnett
20 NANCY BURNETT, Member

21 William A. Harrison
22 WILLIAM A. HARRISON
23 Administrative Appeals Judge

24
25 DECISION AMENDMENT UPON
26 AGREED REMAND
27 SHB NOS. 88-4 & 88-5

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
DENIED BY CLALLAM COUNTY TO
JAMESTOWN KLALLAM TRIBE and
SEA FARM OF WASHINGTON,

JAMESTOWN KLALLAM TRIBE and
SEA FARM OF WASHINGTON,

Appellants,

and

STATE OF WASHINGTON, DEPARTMENT
OF NATURAL RESOURCES and
DEPARTMENT OF AGRICULTURE,

Intervenors,

v.

CLALLAM COUNTY,

Respondent,

and

SAVE DISCOVERY BAY FOUNDATION
and GUNSTONE FAMILY,

Intervenors and
Cross-Appellants.

SHB Nos. 88-4 & 88-5

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 This matter is the appeal and cross-appeal from the denial of a
2 shorelines substantial development permit for a salmon net pen
3 facility.

4 The matter came on before the Shorelines Hearings Board,
5 William A. Harrison, Administrative Appeals Judge, Presiding. Sitting
6 as the Board were Wick Dufford, Chairman, Judith A. Bendor, Harold S.
7 Zimmerman, Nancy Burnett, Robert C. Schofield and Richard Gidley,
8 Members.

9 Appellant Jamestown Klallam Tribe and Sea Farms of Washington
10 appeared by John A. Woodring, Attorney at Law. Intervenor Department
11 of Natural Resources appeared by Jay D. Geck, Assistant Attorney
12 General. Intervenor Department of Agriculture appeared by Betty J.
13 Edwards, Assistant Attorney General. Respondent Clallam County
14 appeared by Christopher Melly, Deputy Prosecuting Attorney.
15 Intervenor and cross-appellant Gunstone Family, appeared by Peter J.
16 Eglick, Attorney at Law. Intervenor and cross-appellant Save
17 Discovery Bay Foundation, appeared by Gloria M. Champeaux, Member.

18 The hearing was conducted at Sequim, Washington on September 23,
19 1988; and at Seattle on September 26, 27, 28, 29, and 30, 1988; and at
20 Lacey on October 3, 4, and 5, 1988. Gene Barker and Associates
21 provided court reporting services.

22 Witnesses were sworn and testified. By stipulation, certain
23 witnesses gave depositions which were admitted as testimony during
24 November, 1988. Exhibits were examined. The Board viewed the site of
25

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27 SHB Nos. 88-4 & 88-5 (2)

1 the proposed development in the company of the parties. Closing
2 briefs were filed by December 2, 1988. From testimony heard or read
3 and exhibits examined, the Shorelines Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 This matter arises within Discovery Bay in Clallam County and
7 concerns a proposal for rearing salmon in net pens. Discovery Bay is
8 on the northern shore of the Olympic Peninsula between Sequim and Port
9 Townsend.

10 II

11 On April 27, 1987, appellants Sea Farm of Washington and
12 Jamestown Klallam Tribe filed an application with Clallam County for a
13 shoreline substantial development permit. The proposed net pen
14 development for which the permit was sought would consist of 42
15 floating salmon pens, each 40 feet square. These would be paired into
16 21 double file with a central walkway 8 feet wide. There would also be
17 service floats for food storage and a security shelter. The surface
18 area covered by the pens, walkway and service floats would total just
19 under 2 acres. The net pen configuration would be 900 feet long by 93
20 feet wide.

21 III

22 The long axis of the net pens would roughly parallel the western
23 shore of Discovery Bay. The distance offshore ranges from 1,300 feet
24 at the southwest corner to 1,700 feet at the northwest corner of the
25

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(3)

1 pens. The pens would be 15 feet deep, floating in depths of 156-192
2 feet. These distances and depths are relative to mean lower low water.

3 IV

4 The walkway railings would extend 4 feet above water surface.
5 The 20'x 40' food storage float would be loaded to a height of 5 feet
6 above water surface. The security shelter, 10' x 12' would be 10 feet
7 above water surface.

8 V

9 The net pens would be attached to the bottom by an array of
10 anchors tethered to the pens' perimeter. The area of bottom
11 encompassed by the anchors totals some 48 acres.

12 VI

13 The object of the proposal is to market the pen-reared salmon for
14 service in restaurants. This would occur when the salmon has reached
15 a weight of about nine pounds. The proposal is for a maximum
16 production of 540,000 pounds of salmon per year from these net pens.

17 VII

18 Food for the salmon rearing would be loaded onto appellants'
19 boats at the marina in nearby Sequim Bay although appellants do not
20 propose that any structures be built at the marina in connection with
21 this net pen proposal. Although the fish may be killed at the pen
22 site, there would be no processing or sales at the pen site. The fish
23 would be landed at the marina in Sequim Bay, and taken to market
24 elsewhere.

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26 FINAL FINDINGS OF FACT,
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VIII

The net pens would be offshore at a point approximately mid-way between Diamond Point and Eagle Creek. Diamond Point is the western headland at the mouth of Discovery Bay. Eagle Creek is about 9,000 feet south of Diamond Point.

IX

Diamond Point is fully developed as a residential community. The point protrudes at nearly sea level so that many homes there are at approximately water level.

X

The shore adjacent to the net pen site differs from Diamond Point in that it rises steeply from the water. Except for a narrow strip of beach, it consists of a 200 foot high bluff running at least 3,000 feet in either direction from the proposed pen site. The land on top of the bluff is predominately state land managed for forestry. The beach at the toe of the bluff, including tidelands, is privately owned by intervenor and cross-appellant, the Gunstone Family.

XI

The Gunstones have harvested clams for market since 1927. They specialize in native littleneck clams sold for service in restaurants. They enhance their beaches by adding shells and fine gravel and by removing star fish and moon snails. However, harvesting is done by hand. The Gunstone beaches in Discovery Bay, Sequim Bay and Killiset Harbor yield 300,000 pounds of native littleneck clams

1 per year. The Gunstone beach nearest the offshore net pen site has
2 yielded 30,000 pounds of native littleneck clams when harvested in the
3 past. This included uplands and tidelands from the Diamond Point
4 community southward to Eagle Creek and some distance beyond. That
5 beach has commercial densities of clams. The greater density is
6 opposite or north of the offshore net pen site.

7 XII

8 In response to numerous net pen proposals in Puget Sound the
9 State Department of Ecology has commissioned a scientific report
10 entitled, "Recommended Interim Guidelines for the Management of Salmon
11 Net Pen Culture in Puget Sound" (hereafter, "Guidelines"). These
12 Guidelines are intended to provide a basis for management of salmon
13 net pen culture in Puget Sound until completion of a programmatic
environmental impact statement. The Guidelines recite that:

15 It is the opinion of state agencies that those
16 facilities sited and operated in accordance with these
17 guidelines will result in little or no adverse
18 environmental effects (sic) within those areas of
potential impact addressed by the guidelines.
Guidelines, p.1 (Exhibit A-9, herein).

19 The Guidelines have not been adopted as regulations. Nonetheless, we
20 find them, in the context of the evidence presented here, to be
21 persuasive.

22 XIII

23 By a declaration dated June 22, 1987, the Clallam County Director
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26 FINAL FINDINGS OF FACT,
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(6)

1 of Community Development found the Discovery Bay net pen proposal to
2 be consistent with the Guidelines. Based upon this and conditions
3 arising from consideration of an environmental checklist, the Director
4 issued a Determination of Non-Significance (DNS) under the State
5 Environmental Policy Act, Chapter 43.21C RCW. He found that the
6 proposal would not have a probable significant adverse impact on the
7 environment. This finding and DNS were sustained by the Board of
8 Clallam County Commissioners. A copy of the DNS was sent to Jefferson
9 County.

10 XIV

11 By action taken at its meeting of July 13, 1987, the Clallam
12 County Shoreline Advisory Committee approved the Discovery Bay net pen
13 proposal with nine enumerated conditions. In so approving, the
14 Advisory Committee adopted staff findings that potential impacts to
15 the environment have been identified and are considered
16 non-significant.

17 XV

18 By Resolution No. 11 (undated) entered in 1988, the Board of
19 Clallam County Commissioners denied the shoreline substantial
20 development permit application for the net pen proposal in Discovery
21 Bay. The Resolution recites that the applicant, Sea Farms and
22 Jamestown Klallam Tribe, failed to show that the project is consistent
23 with control of pollution and prevention of damage to the
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1 environment. Specific reference was made in the Resolution to
2 conflict between the proposal and the commercial shellfish beds in
3 Discovery Bay.

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5 XVI

6 Appellants Sea Farms and Jamestown Klallam Tribe appeal from the
7 County's denial. Their request for review was filed before us on
8 February 8, 1988 (SHB No. 88-5). On the same date, intervenors and
9 cross-appellants Save Discovery Bay Foundation and the Gunstone
10 family, filed their request for review challenging the County's DNS,
11 but supporting the County's denial of the shoreline permit.

12 XVII

13 The evidence before us can be classified into seven major subject
14 headings. These concern the proposed net pens' effect regarding 1)
15 nitrogen, 2) sedimentation, 3) antibiotics, 4) disease, 5) aesthetics,
16 6) use conflicts, and 7) economics. Finally, there is the question of
17 whether the net pens would be located in an estuary.

18 XVIII

19 Nitrogen. The concern with regard to nitrogen is that the net
20 pen fish would introduce nitrogen to the water by excretion or
21 urination. Unconsumed fish food would also be a nitrogen source.
22 Nitrogen is a nutrient which, in certain circumstances, might stimulate
23 phytoplankton productivity (i.e. initiate or sustain blooms). Certain
24 types of phytoplankton when stimulated to abundance are harmful to
25 marine organisms.

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XIX

The extent to which net pen nitrogen might stimulate or sustain phytoplankton blooms varies with the nitrogen concentration existing at the site before net pens are added. This is because higher nitrogen concentrations, if already in existence, would fulfill most or all of the phytoplankton's capacity to use it. Therefore, in such circumstances, addition of nitrogen from net pens would not further affect the phytoplankton. Conversely, low background concentrations of nitrogen may not fulfill that capacity. The increment added by net pens could then have a growth inducing effect on phytoplankton. The Guidelines developed by DOE are cognizant of this relationship. Therefore the Guidelines have set aside portions of Puget Sound and connecting waters as not recommended for net pens due to low nitrogen concentrations. These areas are:

1. Budd Inlet
 2. Holmes Harbor
 3. Hood Canal south of Hazel Point.
- (Guidelines, p. 21).

The Guidelines also recognize these places where nitrogen concentrations are so high as to require no limit on net pen production from the standpoint of phytoplankton concern:

1. Strait of Juan de Fuca
2. Strait of Georgia

3. San Juan Islands
4. Main Basin of Puget Sound
5. Southern Puget Sound in the vicinity of Tacoma Narrows, Nisqually Reach and Anderson Island.

(Guidelines, p. 21).

Lastly, the Guidelines identify the remainder of Puget Sound and connecting waters as having nitrogen concentrations that will allow net pens if they are limited in annual production and therefore nitrogen output. (Guidelines, p. 20). This remainder has been divided into 19 sub-areas, one of which is Discovery Bay. The Guidelines prescribe a maximum annual fish production from net pens in each sub-area. In the case of Discovery Bay the maximum annual production is 540,000 pounds of fish from net pens. (Guidelines, Table 5, p. 30). This is the amount proposed in the matter now before us.

XX

The proposed 540,000 pounds per year fish production would increase by approximately 1% the nitrogen flux now introduced to the Bay by tidal action. This is the conservative percentage increase prescribed by the Guidelines. Moreover, the physical processes of advection and turbulent mixing of wastes, passing the site will dilute the nitrogen produced by the fish at a rate that greatly exceeds its utilization by the phytoplankton. The nitrogen produced by the net

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1 pen proposal would be unlikely to cause either local blooms of
2 phytoplakton or any significant change in the phytoplankton crop in
3 Discovery Bay.

4 XXI

5 Sedimentation. The net pen culture of salmon results in both
6 excess feed and fish feces which settle to the sea floor. This
7 organic sediment will decay, consuming oxygen as it does so. When the
8 rate of decay reaches the rate of deposition, a steady state
9 accumulation of sediment will occur. The steady state accumulation of
10 sediment can affect benthic organisms beneath it. The degree of
11 oxygen consumption and effect on benthic organisms varies with the
12 volume of sediment and the degree to which current and depths
13 contribute to its dispersal.

14 XXII

15 The Guidelines recommend that neither the net pen nor its sediments
16 should be located in "habitats of special significance." Such
17 habitats are defined as those important to commercial or sports
18 fisheries, that are of critical ecological importance or that are
19 especially sensitive to degradation by net pen culture activities.
20 (Guidelines, p. 17). Except under circumstances not shown here,
21 habitats of special significance are defined to occur only in depths
22 of 75 feet or less at mean lower, low water (MLLW). (Guidelines, pp.
23 17-18). Outside habitats of special significance, net pen sediments
24

1 are subject to Guideline recommendations on currents and depths at the
- 2 site in question. In particular, a mean current speed of 0.1 knot (5
3 cm/sec.) is recommended at the mid point between net bottom and sea
4 bottom at the least depth measured at MLLW. (Guidelines, p. 14).
5 Also, the depth below net bottom is recommended as 60 feet or more at
6 the 0.1 current speed just described. (Guidelines, p. 15).

7 XXIII

8 The net pen proposal at issue would produce a steady state
9 accumulation of sediment in an oblong pattern on the same axis as the
10 net pens. The sediment would extend some 600 feet north of the pens,
11 some 400 feet south and some 330 feet shoreward to the west and 300
12 feet to the east. However, the thickness of the sediment would be a
13 maximum of one inch. This would be in an oval shaped area of 5 acres
14 directly under or close to the pens. The outer contour of sediment
15 would encompass some 28 acres. In the outer 19 acres of that area,
16 maximum sediment thickness would be four one-hundredths of one inch.
17 Sediment from the proposal would not enter a habitat of special
18 significance as defined by the Guidelines since the sediment would be
19 confined to depths greater than 90 feet MLLW. The site of the net pen
20 proposal meets the mean current speed recommendation of the Guidelines
21 for 0.1 knot at mid-point. It exceeds the 60 foot depth
22 recommendation of the guidelines by having a least depth, below nets,
23 of 141 feet.
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XXIV

The sediments from the net pen proposal would consume oxygen at the rate of .36 mg/l up to 13 feet above the accumulation. This would not be a measureable effect, and dissolved oxygen concentrations would rapidly return to ambient concentrations as the currents mix and transport depleted water away from the site. There would likely be a change in the benthic community directly under the sediments involving a shift to greater numbers of fewer species. Overall, sediment from the net pen proposal is not likely to have an adverse biological effect.

XXV

Disease. Bacteria of the genus Vibrio, including both pathogenic and nonpathogenic species, are widely distributed in the water, biota and sediments of Puget Sound. Net pen culture may potentially lead to increased numbers of such bacteria due to the organically rich sediments. Vibrio bacteria pathogenic to fish such as Vibrio anguillarum, are not normally virulent unless the host animal is stressed. Thus, the danger posed by such fish pathogens is that the disease vibrosis will be contracted by the net pen fish which are under stress due to their confinement. There is no evidence that net pen culture has contributed to an increased incidence of vibrosis in wild fish. Similarly, the viral disease V.E.N. in native Pacific herring could pose a risk to the net pen salmon. However, there is no evidence of adverse impact of salmon net pens on herring schools.

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XXVI

Research at Milford Laboratory in Connecticut has shown that the fish pathogen Vibrio anguillarum, in sea water at very low concentrations, is implicated in the larval disease of oysters in an east coast hatchery. These experiments did not attempt to duplicate the temperature or other environmental conditions found in Puget Sound and related waters. The experience with an oyster hatchery maintained in Clam Bay near Manchester, Washington, is that no harm resulted to the oysters from use of sea water in Clam Bay despite the prolonged presence of a large salmon net pen development within Clam Bay, about one-quarter mile from the hatchery. There are native littleneck clams and substantial numbers of geoducks existing in Clallam Bay.

XXVII

Intervenors and cross-appellants have stipulated that importation of exotic fish disease is not at issue. The evidence does not establish a concern in this regard.

XXVIII

A Vibrio bacteria pathogenic to humans, Vibrio parahaemolyticus, has been identified as causing gastroenteritis with symptoms which include diarrhea, abdominal cramps, nausea and vomiting. People who eat raw or insufficiently cooked shell fish or fin fish containing V. parahaemolyticus can contract gastroenteritis with the symptoms just described. Unless a person is particularly vulnerable, treatment if

1 given is usually through a physician at their office, rather than
2 hospitalization.

3 While vibrio parahaemolyticus is widespread in Puget Sound, not
4 all strains cause human illness. Moreover, the cool temperatures
5 which persist throughout the year in much of Puget Sound prevent the
6 species from reaching densities necessary to cause infection. Studies
7 at the University of British Columbia have noted the presence of V.
8 parahaemolyticus in summer when water temperatures equal or exceed 17
9 degrees centigrade and salinities were equal to or below 13 parts per
10 thousand. The same studies, in winter, failed to detect any V.
11 parahaemolyticus when water temperatures were less than 14 degrees
12 centigrade and salinities were greater than 13 parts per thousand. At
13 or near the surface of the site in question, temperatures have
14 approached but not equaled 17 degrees centigrade. At the bottom,
15 where enriched sediments would be found, temperatures do not exceed 12
16 degrees centigrade. Salinities at or near the site are on the order
17 of 30 parts per thousand. It is unlikely that V. parahaemolyticus
18 bacteria would reach densities necessary to cause infection at or near
19 the site of the proposed net pens.

20 XXIX

21 Antibiotics. The proposed net pen development would employ
22 antibiotics as a means to combat the bacteria pathogenic to fish such
23 as V. anguillarum. The antibiotic employed would be approved by the
24 U.S. Food and Drug Administration for food fish (probably
25

1 oxytetracycline). In Japan, various chemotherapeutic agents have been
2 used for treating bacterial infections in cultured fish for the last
3 25 years. This prolonged use of chemotherapeutics, while not
4 necessarily comparable to the proposal before us, has resulted in drug
5 resistant fish pathogenic bacteria. Research in Japan has shown that
6 drug resistance is carried on "R plasmids" which are genetic
7 entities. The R plasmids have been shown to be transferrable among
8 different bacterial hosts. Under laboratory conditions, researchers
9 have observed the transfer of R plasmids from the fish pathogen V.
10 anguillarum to the human pathogen V. parahaemolyticus.^{1/} These R
11 plasmids were stably maintained. However, drug resistant strains of
12 V. parahaemolyticus were not isolated. Thus the public health concern
13 of an antibiotic resistant V. parahaemolyticus remains unproven even
14 in fish culturing which is well established and more extensive than is
15 practiced here. While research in this area bears watching, we do not
16 find it presently persuasive that this proposal is likely to induce
17 antibiotic resistant V. parahaemolyticus. Moreover, we have found V.
18 parahaemolyticus unlikely to be present in densities necessary to
19 cause infection at the site in question. (See Finding of Fact XXVIII,
20 above.)

22 ^{1/} Characteristically, seafood poisoning from V. parahaemolyticus
23 predominates in Japan because of the custom of eating raw seafood.
24 Once contracted, the resulting gastroenteritis is treated with
25 antibiotics.

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XXX

Aesthetics. The proposed net pen development would be visible from the residential communities of Diamond Point, Beckett Point and Cape George which are located on Discovery Bay. We find that at distances of 2,000 feet or more, the visual effect of the proposal would not be significant. Thus, the Diamond Point community, 3,000 feet from the proposal would realize little visual impact. This is true to an even greater degree for the Beckett Point community more than 6,000 feet distant and the Cape George community more than 10,000 feet distant. The shore adjacent to the proposed net pen site consists of a bluff some 200 feet high with undeveloped state timberlands running back from the bluff top. The closest residence to the proposal is atop the bluff and 1,950 feet away. That residence would be subject to an aesthetic effect from the proposal which would be moderate, at most. It is improbable, based on comparable net pen developments, that the proposal would have a negative effect on residential property values. The aesthetic effect of the proposed net pens, if well kept and developed in colors which blend with the aquatic environment, would be low to moderate.

XXXI

Use Conflicts. The two chief uses of Discovery Bay which are alleged to conflict with the proposed net pens are fishing and tow boat activity. As to fishing, there is no commercial salmon fishing

1 in Discovery Bay due to depressed stocks. Commercial bottom fishing
2 is limited in Discovery Bay due to depressed stocks. Recreational
3 fishing is available over most of Discovery Bay's 6,000 - 7,000
4 surface acres of which the proposal would use 2 surface acres. The 48
5 acre grid of anchor lines would limit but not necessarily prevent
6 recreational fishing.

7 The proposed net pen site overlaps to a minor extent with a sport
8 fishing location previously charted by Department of Fisheries north
9 of the pen site. The pen site is also on the periphery of a winter
10 blackmouth sport fishing area previously located on fishing derby
11 maps. The net pen proposal is unlikely to have any significant
12 adverse effect upon fishing or related navigation.

13 XXXII

14 With regard to tow boat activity, Discovery Bay is used as a
15 safe-haven for tow boats pulling log rafts in inclement weather.
16 Predominant winter winds are from the south so that towboats anchor
17 between Beckett Point and Cape George when seeking refuge. The
18 proposed net pens would not interfere with anchorage there.
19 Predominant summer winds are from the west so that towboats anchor at
20 a point about half way between the proposed net pen site and Eagle
21 Creek. (This anchorage is designated "A" on Exhibit R-6H, herein). A
22 typical tow boat and log raft, at anchor, would be some 1,300 feet
23 long. The distance from the summer anchorage just described to the
24 net pens is approximately 3,000 feet. The net pen proposal is
25

1 unlikely to have any significant adverse effect upon tow boat
2 navigation.

3 XXXIII

4 Economics. An established market exists for the sale of salmon
5 like those which the proposal would produce. The proposal has the
6 potential for success if operated carefully.

7 XXXIV

8 Estuary. The term "estuary" is defined in the Clallam County
9 Shoreline Master Program (CCSMP) to mean:

10 The seaward end or the widened delta shaped tidal
11 mouth of a river valley where freshwater mixes with,
12 and measureably dilutes, seawater and where tidal
effects are evident. (CCSMP, Glossary, No. 37, p. 112).

13 Intervenors and cross-appellants contend that the whole of Discovery
14 Bay, including the proposed net pen site is an estuary. We disagree.
15 The definition in the CCSMP specifically limits an estuary to a river
16 valley or its delta.^{2/} While certain streams or rivers empty into
17 Discovery Bay, we do not find this sufficient to deem the entire Bay
18 "a river valley". Moreover, the CCSMP definition of estuary requires
19 freshwater to be mixing with and measureably diluting seawater.
20 Salinity comparisons between the site in Discovery Bay and a control
21 point out of the Bay in the Strait of Juan de Fuca' do not support the
22 existence of such mixing in any material sense. As measured in parts
23

24 ^{2/} The Department of Ecology guideline for master programs is in
25 accord. It declares: "An estuary is that portion of a coastal stream
26 . . . ". WAC 173-16-050.

1 per thousand during July through October, 1987, and June of 1988,
2 surface salinity at the site averaged 30.7 versus 30.66 in the
3 Strait. Similarly, there are minimal differences in salinity between
4 various depths at the site, either considered alone or by comparison
5 with the Strait. Lastly, there has been no evidence to indicate any
6 difference in habitat quality between the proposed net pen site and
7 the greater saltwaters of the Strait. The proposed net pen site is
8 not located within an estuary.

9 XXXV

10 Provisions of the Shoreline Master Program at Issue. The
11 Clallam County Shoreline Master Program defines "Aquaculture" as:

12 Aquaculture is the farming or culturing of game and
13 food fish, or aquatic plants and animals in fresh or
14 salt water areas, and may include such developments as
15 fish hatcheries, rearing pens, shorebased structures
16 and shellfish rafts. Excluded from this definition is
17 the private husbanding or harvesting of anadromous
18 fish, as prohibited by Washington State Law.

19 Aquaculture practices pertain to any activity directly
20 related to growing, handling or harvesting of
21 aquaculture produce, including but not limited to,
22 propagation, enhancement and rehabilitation of said
23 fisheries resources. Excluded from the definition are
24 related commercial uses such as wholesale and retail
25 sales, processing, packaging or freezing facilities.

26 (CSSMP, Section 5.02A, p. 42, emphasis added).

XXXVI

27 The site of the proposed salmon net pens is designated
28 "Conservancy". CCSMP Designation of Environments, p. 119.

XXXVII

Within the Conservancy environment:

Aquaculture developments utilizing submerged or floating structures are a permitted use, subject to the policies and regulations.

CCSMP, Section 5.02 c.4.b.1., p. 45.

XXXVIII

The CSSMP aquaculture policies are as follows:

1. Aquaculture activities and structures should be located in areas where vessel navigation is not severely restricted.
2. Potential locations for aquaculture enterprises and practices are relatively restricted, due to specific biophysical requirements, such as water quality, temperatures, substrate, dissolved oxygen and, in coastal waters, salinity. Therefore, special emphasis and consideration should be given to these factors when considering other water dependent uses in those areas having high potential for aquaculture.
3. Due to the formative and experimental nature of aquaculture technology and practices, attention should be given to encouraging the introduction of, and experimentation with, new aquaculture methods, devices, and practices in designated areas only.
4. Particular attention should be addressed toward the possible effects that aquaculture practices may have on the long term ecological stability of the aquatic ecosystem and any secondary detrimental effects that could arise as a result of various aquacultural practices.
5. Development ancillary to aquaculture should be located inland off the shorelines, unless clearly dependent upon a shoreline or overwater location.

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1 6. The enhancement or rehabilitation of water bodies
2 and their adjacent habitat by public or private
3 entities for purposes of increasing yields or
production of fisheries resources should be
encouraged.

4 7. Aquaculture structures and facilities should be
5 located and designed to not significantly degrade
unique scenic aspects of the area.

6 CCSMP, Section 5.02 B., p. 42.

7
8 XXXIX

9 A pertinent CCSMP aquaculture regulation provides:

10 As aquaculture is a preferred, water dependent use,
11 special emphasis shall be given to identifying and
12 resolving resource use conflicts between aquaculture and
other water dependent uses in areas having a high
potential for aquaculture development.

13 CCSMP, Section 5.04 C.5.C., p. 46.

14
15 XXXX

16 The CCSMP policies and regulations not specific to aquaculture,
17 at issue here, are: 1) Goals and General Policies I, III, VI, VII and
18 VIII. CCSMP pp. 5-6, 2) Conservancy Policies, Nos. 1, 4, 5 and 6.
19 CCSMP Section 3.03 C. pp. 10-11, and Natural Systems Regulations,
20 Sections 4.01, 4.05, 4.07 and 4.12. CCSMP Chapter 4, pp. 20-37. The
21 full text of these is set out in the CCSMP, of which we take official
22 notice, and which is marked for identification as "O.N.-1" of this
23 record. The above policies and regulations relate to preservation of
24 scenic qualities, recognition of water quality as a prime goal,
25 regulation of governmental units on the same basis as private

1 interests, protection of public interest, consideration of long term
2 benefits, economic development, access to marine beaches, preference
3 for uses which minimally reduce opportunities for other future uses,
4 preservation of aesthetic qualities, and regulations for marine
5 beaches, estuaries, bays, coves, headlands and subtidal shorelines.

6 XXXXI

7 Any Conclusion of Law deemed to be a Finding of Fact is hereby
8 adopted as such. From these Findings of Fact, the Board makes these

9 CONCLUSIONS OF LAW

10 I

11 We review the proposed development for consistency with the
12 Shoreline Management Act and the Clallam County Shoreline Master
13 Program. See RCW 90.58.140(2)(b). Where, as here, an issue is raised
14 as to compliance with the State Environmental Policy Act (SEPA), we
15 will review such compliance also. WAC 461-08-175(2)(a) and chapter
16 43.21C RCW.

17 II

18 SEPA. Intervenors and cross-appellants challenge the
19 determination of non-significance made under SEPA. They first contend
20 that the Shoreline Advisory Committee, and not the Director of
21 Community Planning, should have issued the threshold determination for
22 Clallam County. Reference is made to local ordinances of Clallam
23 County which provide:

24
25
26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

SHE Nos. 88-4 & 88-5 (23)

1 Following a public hearing on any permit and before
2 making a decision to recommend approval, denial or
3 conditional approval of a permit, the Shoreline
4 Advisory Committee shall determine the environmental
5 significance of the proposed development.
6 CCC Section 35.01.180.

7 In the event the Shoreline Advisory Committee
8 determines the proposal will not have a significant
9 adverse effect on the quality of the environment, it
10 shall prepare a proposed declaration of nonsignificance
11 in accordance with the requirements of the Council on
12 Environmental Policy and the Clallam County Policy
13 Ordinance.
14 CCC Section 35.01.190.

15 Equally important, however, is the state regulation implementing SEPA
16 as adopted by Department of Ecology (successor to the Council on
17 Environmental Policy). This provides:

18 Agency SEPA procedures shall designate or provide a
19 method of designating the responsible official with
20 speed and certainty (WAC 197-11-906(1)(d)). This
21 designation may vary depending upon the nature of the
22 proposal. The responsible official shall carry out the
23 duties and functions of the agency when it is acting as
24 the lead agency under these guidelines . . .
25 WAC 197-11-910.

26 The Clallam County Environmental Policy Ordinance, Ch. 27.01,
designates the planning director (Director of Community Development)
as the Responsible Official for SEPA threshold determinations. Thus
under the State SEPA regulation and local SEPA ordinance, the Director
of Community Development was correct in issuing the threshold
determination. The Director of Community Development is the
Responsible Official. The Responsible Official makes the threshold

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(24)

1 determination under state SEPA regulation. WAC 197-11-310(2). The
2 Shoreline Advisory Committee (S.A.C.) was not the Responsible
3 Official. However, it did adopt the finding on non-significance
4 contained in the threshold determination. This adoption followed
5 S.A.C. hearings in which intervenors and cross-appellants
6 participated. We conclude that the threshold determination was issued
7 by the correct Clallam County official.

8 III

9 Intervenor and cross-appellants next contend that the DNS made
10 by Clallam County is inconsistent with SEPA. The DNS is a
11 determination which shall be accorded substantial weight. RCW
12 43.21C.090. Viewing the evidence before us as a whole, we conclude
13 that the DNS was not shown to be erroneous.

14 IV

15 Clallam County Shoreline Master Program (CCSMP) The proposed
16 salmon net pen development is "aquaculture" as defined in the CCSMP.
17 Section 5.02 A, p. 42, text at Finding of Fact XXXV, above. We have
18 previously concluded that it is not commercial development. "Order on
19 Motions for Summary Judgment", herein, entered July 29, 1988. As an
20 aquaculture development which uses submerged or floating structures,
21 the proposal is a permitted use, subject to policies and regulations,
22 in the conservancy environment where it is proposed. CCSMP, Section
23 5.02 C.4. b.1., p. 45., text at Finding of Fact XXXVII, above.

24
25
26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(25)

V

Appellants have shown that the salmon net pen proposal, properly conditioned, is unlikely to have a significant adverse effect regarding nitrogen, sedimentation, antibiotics or disease. It is unlikely that the proposal will have a significant adverse effect upon clams or other aquatic resources. The proposal, properly conditioned, was also shown to be unlikely to result in significant conflict with other aquatic uses or to have a significantly adverse aesthetic effect. The proposal, properly conditioned, would be consistent with the applicable CCSMP policies and regulations.

VI

The proposed development would not be located in an estuary as defined in the CCSMP. Glossary, No. 37, p. 112, text at Finding of Fact XXXIV. Those provisions of the CCSMP applicable to proposals in an estuary do not apply.

VII

Shoreline Management Act. The proposed development, properly conditioned, would contribute to the statewide production of food and yet be consistent with prevention of damage to the environment. This is consistent with the policy of the Shoreline Management Act including those applicable to shorelines of statewide significance. RCW 90.58.020. See also WAC 173-16-060(2). Appellants have shown that this proposal was not improperly segmented to exclude any shoreline, land-based development as none is proposed for support of

1 these net pens. The proposal, properly conditioned, would be
2 consistent with the Shoreline Management Act.

3 VIII

4 The proposed development meets the requirements of both the
5 Clallam County Shoreline Master Program and the Shoreline Management
6 Act provided that the following conditions are imposed:

- 7 1. The proposal shall meet all standards in the
8 "Recommended Interim Guidelines for the Management
9 of Salmon Net Pen Aquaculture in Puget Sound"
10 prepared by Science Applications International
11 Corporation for the Washington State Department of
12 Ecology, December, 1986. The standards of the
Guidelines include, among other standards, the
maximum limitation of one percent increase in
nitrogen flux and the maximum limitation of
540,000 pounds of annual fish production.
- 13 2. Predator control methods shall be limited to
netting.
- 15 3. The applicant shall post a \$6,500 savings account
16 assignment (payable upon demand bond) with Clallam
County under provisions of Chapter 35.01.130 of
17 the Shoreline Management Ordinance for the purpose
of removal of the facility in the event of
abandonment.
- 18 4. The net pens shall be limited to the culturing and
19 rearing of salmon.
- 20 5. Any shore based facility shall be prohibited at
21 Diamond Point within the Rural/Conservancy
22 environments from the east line of Lot 1, Section
16, Township 30N, Range 2W, south to the county
line.
- 23 6. No lighting is allowed other than for navigation
24 and shielded lighting in the security shed.

7. Engines or motors used for power generation or aeration shall be installed with sound dampening enclosures.
8. Neutral colors which blend with the aquatic environment shall be used for the project.
9. The permit shall be valid only for those activities outlined in the application.
10. The poundage of salmon in the pens shall not exceed 25% of annual production until after December of the first calendar year of operation nor 50% of annual production until after April of the second calendar year of operation. The monitoring required by Section 6.3 of the Interim Guidelines shall be conducted when the poundage of salmon in the pens reaches 25% of annual production and again at 50% of annual production. Thereafter, monitoring shall be according to the Interim Guidelines under Condition 1., above.

IX

The above conditions are each supported by the evidence before us. The first nine conditions were recommended by the County Shoreline Advisory Committee or staff and are agreed to by appellants. We have not imposed the Shoreline Advisory Committee's recommended conditions 1) limiting the proposal to Atlantic salmon and 2) requiring a shellfish monitoring program by Washington State Department of Fisheries. As to the first of these, the evidence does not support exclusion of Pacific salmon culture. For that reason, the condition which we prescribe is limited to salmon culture generally. As to the second of these, the evidence shows that Department of

1 Fisheries does not deem it necessary to conduct monitoring in addition
2 to that of the Guidelines. Because of the importance of the existing
3 clam resource in Discovery Bay, however, we have imposed condition No.
4 10, above. Under it, the net pen proposal must be phased-in with
5 monitoring as prescribed in the Guidelines at the end of each
6 preliminary phase. The phase-in which we require is consistent with
7 appellant's studies. Exhibit A-11, Table 5, p. 40. Monitoring at
8 full production, and after, is to be in accordance with the Guidelines
9 under Condition No. 1., above. The monitoring will assure compliance
10 with the substantive requiremnts of the Guidelines, also imposed by
11 Condition No. 1., above. If at any time the monitoring indicates a
12 failure to meet the substantive Guideline requirements, Clallam County
13 may take appropriate action, including permit recision under RCW
14 90.58.140(8). Recision would be reviewable here. RCW 90.58.180. The
15 monitoring requirements and recision remedy are precautionary,
16 however, and do not diminish our conclusion that the proposal, as
17 conditioned, is consistent with the CCSMP and the Shoreline Management
18 Act.

19 X

20 Any Finding of Fact deemed to a Conclusion of Law is hereby
21 adopted as such. From these Conclusions of Law, the Board enters this
22

ORDER

The denial of a shoreline substantial development permit by Clallam County is reversed. The matter is remanded to Clallam County for issuance of a shoreline substantial development permit containing the conditions set out in Conclusion of Law VIII, hereof.

DONE at Lacey, WA, this 15th day of May, 1989.

SHORELINES HEARINGS BOARD

Wick Dufford

WICK DUFFORD, Chairman

Judith A. Bendor

JUDITH A. BENDOR, Member

Harold S. Zimmerman

HAROLD S. ZIMMERMAN, Member

Nancy Burnett

NANCY BURNETT, Member

Robert C. Schofield

ROBERT C. SCHOFIELD, Member

Richard G. Gidley

RICHARD GIDLEY, Member

William A. Harrison

WILLIAM A. HARRISON

Administrative Appeals Judge

FINAL FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(30)

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
DENIED BY CLALLAM COUNTY TO
JAMESTOWN KLALLAM TRIBE and
SEA FARM OF WASHINGTON,

JAMESTOWN KLALLAM TRIBE and
SEA FARM OF WASHINGTON,

Appellants,

and

STATE OF WASHINGTON, DEPARTMENT
OF NATURAL RESOURCES and
DEPARTMENT OF AGRICULTURE,

Intervenors,

v.

CLALLAM COUNTY,

Respondent,

and

SAVE DISCOVERY BAY FOUNDATION
and GUNSTONE FAMILY,

Intervenors and
Cross-Appellants.

SHB Nos. 88-4 & 88-5

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 This matter is the appeal and cross-appeal from the denial of a
2 shorelines substantial development permit for a salmon net pen
3 facility.

4 The matter came on before the Shorelines Hearings Board,
5 William A. Harrison, Administrative Appeals Judge, Presiding. Sitting
6 as the Board were Wick Dufford, Chairman, Judith A. Bendor, Harold S.
7 Zimmerman, Nancy Burnett, Robert C. Schofield and Richard Gidley,
8 Members.

9 Appellant Jamestown Klallam Tribe and Sea Farms of Washington
10 appeared by John A. Woodring, Attorney at Law. Intervenor Department
11 of Natural Resources appeared by Jay D. Geck, Assistant Attorney
12 General. Intervenor Department of Agriculture appeared by Betty J.
13 Edwards, Assistant Attorney General. Respondent Clallam County
14 appeared by Christopher Melly, Deputy Prosecuting Attorney.
15 Intervenor and cross-appellant Gunstone Family, appeared by Peter J.
16 Eglick, Attorney at Law. Intervenor and cross-appellant Save
17 Discovery Bay Foundation, appeared by Gloria M. Champeaux, Member.

18 The hearing was conducted at Sequim, Washington on September 23,
19 1988; and at Seattle on September 26, 27, 28, 29, and 30, 1988; and at
20 Lacey on October 3, 4, and 5, 1988. Gene Barker and Associates
21 provided court reporting services.

22 Witnesses were sworn and testified. By stipulation, certain
23 witnesses gave depositions which were admitted as testimony during
24 November, 1988. Exhibits were examined. The Board viewed the site of
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(2)

1 the proposed development in the company of the parties. Closing
2 briefs were filed by December 2, 1988. From testimony heard or read
3 and exhibits examined, the Shorelines Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 This matter arises within Discovery Bay in Clallam County and
7 concerns a proposal for rearing salmon in net pens. Discovery Bay is
8 on the northern shore of the Olympic Peninsula between Sequim and Port
9 Townsend.

10 II

11 On April 27, 1987, appellants Sea Farm of Washington and
12 Jamestown Klallam Tribe filed an application with Clallam County for a
13 shoreline substantial development permit. The proposed net pen
14 development for which the permit was sought would consist of 42
15 floating salmon pens, each 40 feet square. These would be paired into
16 21 double file with a central walkway 8 feet wide. There would also be
17 service floats for food storage and a security shelter. The surface
18 area covered by the pens, walkway and service floats would total just
19 under 2 acres. The net pen configuration would be 900 feet long by 93
20 feet wide.

21 III

22 The long axis of the net pens would roughly parallel the western
23 shore of Discovery Bay. The distance offshore ranges from 1,300 feet
24 at the southwest corner to 1,700 feet at the northwest corner of the
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(3)

1 pens. The pens would be 15 feet deep, floating in depths of 156-192
2 feet. These distances and depths are relative to mean lower low water.

3 IV

4 The walkway railings would extend 4 feet above water surface.
5 The 20'x 40' food storage float would be loaded to a height of 5 feet
6 above water surface. The security shelter, 10' x 12' would be 10 feet
7 above water surface.

8 V

9 The net pens would be attached to the bottom by an array of
10 anchors tethered to the pens' perimeter. The area of bottom
11 encompassed by the anchors totals some 48 acres.

12 VI

13 The object of the proposal is to market the pen-reared salmon for
14 service in restaurants. This would occur when the salmon has reached
15 a weight of about nine pounds. The proposal is for a maximum
16 production of 540,000 pounds of salmon per year from these net pens.

17 VII

18 Food for the salmon rearing would be loaded onto appellants'
19 boats at the marina in nearby Sequim Bay although appellants do not
20 propose that any structures be built at the marina in connection with
21 this net pen proposal. Although the fish may be killed at the pen
22 site, there would be no processing or sales at the pen site. The fish
23 would be landed at the marina in Sequim Bay, and taken to market
24 elsewhere.

25
26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

27 SHB Nos. 88-4 & 88-5

VIII

The net pens would be offshore at a point approximately mid-way between Diamond Point and Eagle Creek. Diamond Point is the western headland at the mouth of Discovery Bay. Eagle Creek is about 9,000 feet south of Diamond Point.

IX

Diamond Point is fully developed as a residential community. The point protrudes at nearly sea level so that many homes there are at approximately water level.

X

The shore adjacent to the net pen site differs from Diamond Point in that it rises steeply from the water. Except for a narrow strip of beach, it consists of a 200 foot high bluff running at least 3,000 feet in either direction from the proposed pen site. The land on top of the bluff is predominately state land managed for forestry. The beach at the toe of the bluff, including tidelands, is privately owned by intervenor and cross-appellant, the Gunstone Family.

XI

The Gunstones have harvested clams for market since 1927. They specialize in native littleneck clams sold for service in restaurants. They enhance their beaches by adding shells and fine gravel and by removing star fish and moon snails. However, harvesting is done by hand. The Gunstone beaches in Discovery Bay, Sequim Bay and Killisnet Harbor yield 300,000 pounds of native littleneck clams

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(5)

1 per year. The Gunstone beach nearest the offshore net pen site has
2 yielded 30,000 pounds of native littleneck clams when harvested in the
3 past. This included uplands and tidelands from the Diamond Point
4 community southward to Eagle Creek and some distance beyond. That
5 beach has commercial densities of clams. The greater density is
6 opposite or north of the offshore net pen site.

7 XII

8 In response to numerous net pen proposals in Puget Sound the
9 State Department of Ecology has commissioned a scientific report
10 entitled, "Recommended Interim Guidelines for the Management of Salmon
11 Net Pen Culture in Puget Sound" (hereafter, "Guidelines"). These
12 Guidelines are intended to provide a basis for management of salmon
13 net pen culture in Puget Sound until completion of a programmatic
14 environmental impact statement. The Guidelines recite that:

15 It is the opinion of state agencies that those
16 facilities sited and operated in accordance with these
17 guidelines will result in little or no adverse
18 environmental effects (sic) within those areas of
19 potential impact addressed by the guidelines.
20 Guidelines, p.1 (Exhibit A-9, herein).

21 The Guidelines have not been adopted as regulations. Nonetheless, we
22 find them, in the context of the evidence presented here, to be
23 persuasive.

24 XIII

25 By a declaration dated June 22, 1987, the Clallam County Director

1 of Community Development found the Discovery Bay net pen proposal to
2 be consistent with the Guidelines. Based upon this and conditions
3 arising from consideration of an environmental checklist, the Director
4 issued a Determination of Non-Significance (DNS) under the State
5 Environmental Policy Act, Chapter 43.21C RCW. He found that the
6 proposal would not have a probable significant adverse impact on the
7 environment. This finding and DNS were sustained by the Board of
8 Clallam County Commissioners. A copy of the DNS was sent to Jefferson
9 County.

10 XIV

11 By action taken at its meeting of July 13, 1987, the Clallam
12 County Shoreline Advisory Committee approved the Discovery Bay net pen
13 proposal with nine enumerated conditions. In so approving, the
14 Advisory Committee adopted staff findings that potential impacts to
15 the environment have been identified and are considered
16 non-significant.

17 XV

18 By Resolution No. 11 (undated) entered in 1988, the Board of
19 Clallam County Commissioners denied the shoreline substantial
20 development permit application for the net pen proposal in Discovery
21 Bay. The Resolution recites that the applicant, Sea Farms and
22 Jamestown Klallam Tribe, failed to show that the project is consistent
23 with control of pollution and prevention of damage to the
24

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(7)

1 environment. Specific reference was made in the Resolution to
2 conflict between the proposal and the commercial shellfish beds in
3 Discovery Bay.

4 XVI

5 Appellants Sea Farms and Jamestown Klallam Tribe appeal from the
6 County's denial. Their request for review was filed before us on
7 February 8, 1988 (SHB No. 88-5). On the same date, intervenors and
8 cross-appellants Save Discovery Bay Foundation and the Gunstone
9 family, filed their request for review challenging the County's DNS,
10 but supporting the County's denial of the shoreline permit.

11 XVII

12 The evidence before us can be classified into seven major subject
13 headings. These concern the proposed net pens' effect regarding 1)
14 nitrogen, 2) sedimentation, 3) antibiotics, 4) disease, 5) aesthetics,
15 6) use conflicts, and 7) economics. Finally, there is the question of
16 whether the net pens would be located in an estuary.

17 XVIII

18 Nitrogen. The concern with regard to nitrogen is that the net
19 pen fish would introduce nitrogen to the water by excretion or
20 urination. Unconsumed fish food would also be a nitrogen source.
21 Nitrogen is a nutrient which, in certain circumstances, might stimulate
22 phytoplankton productivity (i.e. initiate or sustain blooms). Certain
23 types of phytoplankton when stimulated to abundance are harmful to
24 marine organisms.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
SHB Nos. 88-4 & 88-5

XIX

The extent to which net pen nitrogen might stimulate or sustain phytoplankton blooms varies with the nitrogen concentration existing at the site before net pens are added. This is because higher nitrogen concentrations, if already in existence, would fulfill most or all of the phytoplankton's capacity to use it. Therefore, in such circumstances, addition of nitrogen from net pens would not further affect the phytoplankton. Conversely, low background concentrations of nitrogen may not fulfill that capacity. The increment added by net pens could then have a growth inducing effect on phytoplankton. The Guidelines developed by DOE are cognizant of this relationship. Therefore the Guidelines have set aside portions of Puget Sound and connecting waters as not recommended for net pens due to low nitrogen concentrations. These areas are:

1. Budd Inlet
 2. Holmes Harbor
 3. Hood Canal south of Hazel Point.
- (Guidelines, p. 21).

The Guidelines also recognize these places where nitrogen concentrations are so high as to require no limit on net pen production from the standpoint of phytoplankton concern:

1. Strait of Juan de Fuca
2. Strait of Georgia

3. San Juan Islands
4. Main Basin of Puget Sound
5. Southern Puget Sound in the vicinity of
Tacoma Narrows, Nisqually Reach and Anderson
Island.

(Guidelines, p. 21).

Lastly, the Guidelines identify the remainder of Puget Sound and connecting waters as having nitrogen concentrations that will allow net pens if they are limited in annual production and therefore nitrogen output. (Guidelines, p. 20). This remainder has been divided into 19 sub-areas, one of which is Discovery Bay. The Guidelines prescribe a maximum annual fish production from net pens in each sub-area. In the case of Discovery Bay the maximum annual production is 540,000 pounds of fish from net pens. (Guidelines, Table 5, p. 30). This is the amount proposed in the matter now before us.

XX

The proposed 540,000 pounds per year fish production would increase by approximately 1% the nitrogen flux now introduced to the Bay by tidal action. This is the conservative percentage increase prescribed by the Guidelines. Moreover, the physical processes of advection and turbulent mixing of wastes, passing the site will dilute the nitrogen produced by the fish at a rate that greatly exceeds its utilization by the phytoplankton. The nitrogen produced by the net

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(10)

1 pen proposal would be unlikely to cause either local blooms of
2 phytoplakton or any significant change in the phytoplankton crop in
3 Discovery Bay.

4 XXI

5 Sedimentation. The net pen culture of salmon results in both
6 excess feed and fish feces which settle to the sea floor. This
7 organic sediment will decay, consuming oxygen as it does so. When the
8 rate of decay reaches the rate of deposition, a steady state
9 accumulation of sediment will occur. The steady state accumulation of
10 sediment can affect benthic organisms beneath it. The degree of
11 oxygen consumption and effect on benthic organisms varies with the
12 volume of sediment and the degree to which current and depths
13 contribute to its dispersal.

14 XXII

15 The Guidelines recommend that neither the net pen nor its sediments
16 should be located in "habitats of special significance." Such
17 habitats are defined as those important to commercial or sports
18 fisheries, that are of critical ecological importance or that are
19 especially sensitive to degradation by net pen culture activities.
20 (Guidelines, p. 17). Except under circumstances not shown here,
21 habitats of special significance are defined to occur only in depths
22 of 75 feet or less at mean lower, low water (MLLW). (Guidelines, pp.
23 17-18). Outside habitats of special significance, net pen sediments
24

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(11)

1 are subject to Guideline recommendations on currents and depths at the
2 site in question. In particular, a mean current speed of 0.1 knot (5
3 cm/sec.) is recommended at the mid point between net bottom and sea
4 bottom at the least depth measured at MLLW. (Guidelines, p. 14).
5 Also, the depth below net bottom is recommended as 60 feet or more at
6 the 0.1 current speed just described. (Guidelines, p. 15).

7 XXIII

8 The net pen proposal at issue would produce a steady state
9 accumulation of sediment in an oblong pattern on the same axis as the
10 net pens. The sediment would extend some 600 feet north of the pens,
11 some 400 feet south and some 330 feet shoreward to the west and 300
12 feet to the east. However, the thickness of the sediment would be a
13 maximum of one inch. This would be in an oval shaped area of 5 acres
14 directly under or close to the pens. The outer contour of sediment
15 would encompass some 28 acres. In the outer 19 acres of that area,
16 maximum sediment thickness would be four one-hundredths of one inch.
17 Sediment from the proposal would not enter a habitat of special
18 significance as defined by the Guidelines since the sediment would be
19 confined to depths greater than 90 feet MLLW. The site of the net pen
20 proposal meets the mean current speed recommendation of the Guidelines
21 for 0.1 knot at mid-point. It exceeds the 60 foot depth
22 recommendation of the guidelines by having a least depth, below nets,
23 of 141 feet.

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26 FINAL FINDINGS OF FACT,
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XXIV

The sediments from the net pen proposal would consume oxygen at the rate of .36 mg/l up to 13 feet above the accumulation. This would not be a measureable effect, and dissolved oxygen concentrations would rapidly return to ambient concentrations as the currents mix and transport depleted water away from the site. There would likely be a change in the benthic community directly under the sediments involving a shift to greater numbers of fewer species. Overall, sediment from the net pen proposal is not likely to have an adverse biological effect.

XXV

Disease. Bacteria of the genus Vibrio, including both pathogenic and nonpathogenic species, are widely distributed in the water, biota and sediments of Puget Sound. Net pen culture may potentially lead to increased numbers of such bacteria due to the organically rich sediments. Vibrio bacteria pathogenic to fish such as Vibrio anguillarum, are not normally virulent unless the host animal is stressed. Thus, the danger posed by such fish pathogens is that the disease vibrosis will be contracted by the net pen fish which are under stress due to their confinement. There is no evidence that net pen culture has contributed to an increased incidence of vibrosis in wild fish. Similarly, the viral disease V.E.N. in native Pacific herring could pose a risk to the net pen salmon. However, there is no evidence of adverse impact of salmon net pens on herring schools.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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XXVI

Research at Milford Laboratory in Connecticut has shown that the fish pathogen Vibrio anguillarum, in sea water at very low concentrations, is implicated in the larval disease of oysters in an east coast hatchery. These experiments did not attempt to duplicate the temperature or other environmental conditions found in Puget Sound and related waters. The experience with an oyster hatchery maintained in Clam Bay near Manchester, Washington, is that no harm resulted to the oysters from use of sea water in Clam Bay despite the prolonged presence of a large salmon net pen development within Clam Bay, about one-quarter mile from the hatchery. There are native littleneck clams and substantial numbers of geoducks existing in Clallam Bay.

XXVII

Intervenors and cross-appellants have stipulated that importation of exotic fish disease is not at issue. The evidence does not establish a concern in this regard.

XXVIII

A Vibrio bacteria pathogenic to humans, Vibrio parahaemolyticus, has been identified as causing gastroenteritis with symptoms which include diarrhea, abdominal cramps, nausea and vomiting. People who eat raw or insufficiently cooked shell fish or fin fish containing V. parahaemolyticus can contract gastroenteritis with the symptoms just described. Unless a person is particularly vulnerable, treatment if

1 given is usually through a physician at their office, rather than
2 hospitalization.

3 While vibrio parahaemolyticus is widespread in Puget Sound, not
4 all strains cause human illness. Moreover, the cool temperatures
5 which persist throughout the year in much of Puget Sound prevent the
6 species from reaching densities necessary to cause infection. Studies
7 at the University of British Columbia have noted the presence of V.
8 parahaemolyticus in summer when water temperatures equal or exceed 17
9 degrees centigrade and salinities were equal to or below 13 parts per
10 thousand. The same studies, in winter, failed to detect any V.
11 parahaemolyticus when water temperatures were less than 14 degrees
12 centigrade and salinities were greater than 13 parts per thousand. At
13 or near the surface of the site in question, temperatures have
14 approached but not equaled 17 degrees centigrade. At the bottom,
15 where enriched sediments would be found, temperatures do not exceed 12
16 degrees centigrade. Salinities at or near the site are on the order
17 of 30 parts per thousand. It is unlikely that V. parahaemolyticus
18 bacteria would reach densities necessary to cause infection at or near
19 the site of the proposed net pens.

20 XXIX

21 Antibiotics. The proposed net pen development would employ
22 antibiotics as a means to combat the bacteria pathogenic to fish such
23 as V. anguillarum. The antibiotic employed would be approved by the
24 U.S. Food and Drug Administration for food fish (probably
25

1 oxytetracycline). In Japan, various chemotherapeutic agents have been
2 used for treating bacterial infections in cultured fish for the last
3 25 years. This prolonged use of chemotherapeutics, while not
4 necessarily comparable to the proposal before us, has resulted in drug
5 resistant fish pathogenic bacteria. Research in Japan has shown that
6 drug resistance is carried on "R plasmids" which are genetic
7 entities. The R plasmids have been shown to be transferrable among
8 different bacterial hosts. Under laboratory conditions, researchers
9 have observed the transfer of R plasmids from the fish pathogen V.
10 anguillarum to the human pathogen V. parahaemolyticus.^{1/} These R
11 plasmids were stably maintained. However, drug resistant strains of
12 V. parahaemolyticus were not isolated. Thus the public health concern
13 of an antibiotic resistant V. parahaemolyticus remains unproven even
14 in fish culturing which is well established and more extensive than is
15 practiced here. While research in this area bears watching, we do not
16 find it presently persuasive that this proposal is likely to induce
17 antibiotic resistant V. parahaemolyticus. Moreover, we have found V.
18 parahaemolyticus unlikely to be present in densities necessary to
19 cause infection at the site in question. (See Finding of Fact XXVIII,
20 above.)

22 ^{1/} Characteristically, seafood poisoning from V. parahaemolyticus
23 predominates in Japan because of the custom of eating raw seafood.
24 Once contracted, the resulting gastroenteritis is treated with
25 antibiotics.

26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

27 SHB Nos. 88-4 & 88-5 (16)

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XXX

Aesthetics. The proposed net pen development would be visible from the residential communities of Diamond Point, Beckett Point and Cape George which are located on Discovery Bay. We find that at distances of 2,000 feet or more, the visual effect of the proposal would not be significant. Thus, the Diamond Point community, 3,000 feet from the proposal would realize little visual impact. This is true to an even greater degree for the Beckett Point community more than 6,000 feet distant and the Cape George community more than 10,000 feet distant. The shore adjacent to the proposed net pen site consists of a bluff some 200 feet high with undeveloped state timberlands running back from the bluff top. The closest residence to the proposal is atop the bluff and 1,950 feet away. That residence would be subject to an aesthetic effect from the proposal which would be moderate, at most. It is improbable, based on comparable net pen developments, that the proposal would have a negative effect on residential property values. The aesthetic effect of the proposed net pens, if well kept and developed in colors which blend with the aquatic environment, would be low to moderate.

XXXI

Use Conflicts. The two chief uses of Discovery Bay which are alleged to conflict with the proposed net pens are fishing and tow boat activity. As to fishing, there is no commercial salmon fishing

1 in Discovery Bay due to depressed stocks. Commercial bottom fishing
2 is limited in Discovery Bay due to depressed stocks. Recreational
3 fishing is available over most of Discovery Bay's 6,000 - 7,000
4 surface acres of which the proposal would use 2 surface acres. The 48
5 acre grid of anchor lines would limit but not necessarily prevent
6 recreational fishing.

7 The proposed net pen site overlaps to a minor extent with a sport
8 fishing location previously charted by Department of Fisheries north
9 of the pen site. The pen site is also on the periphery of a winter
10 blackmouth sport fishing area previously located on fishing derby
11 maps. The net pen proposal is unlikely to have any significant
12 adverse effect upon fishing or related navigation.

13 XXXII

14 With regard to tow boat activity, Discovery Bay is used as a
15 safe-haven for tow boats pulling log rafts in inclement weather.
16 Predominant winter winds are from the south so that towboats anchor
17 between Beckett Point and Cape George when seeking refuge. The
18 proposed net pens would not interfere with anchorage there.
19 Predominant summer winds are from the west so that towboats anchor at
20 a point about half way between the proposed net pen site and Eagle
21 Creek. (This anchorage is designated "A" on Exhibit R-6H, herein). A
22 typical tow boat and log raft, at anchor, would be some 1,300 feet
23 long. The distance from the summer anchorage just described to the
24 net pens is approximately 3,000 feet. The net pen proposal is
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

SHB Nos. 88-4 & 88-5

(18)

1 unlikely to have any significant adverse effect upon tow boat
2 navigation.

3 XXXIII

4 Economics. An established market exists for the sale of salmon
5 like those which the proposal would produce. The proposal has the
6 potential for success if operated carefully.

7 XXXIV

8 Estuary. The term "estuary" is defined in the Clallam County
9 Shoreline Master Program (CCSMP) to mean:

10 The seaward end or the widened delta shaped tidal
11 mouth of a river valley where freshwater mixes with,
12 and measureably dilutes, seawater and where tidal
effects are evident. (CCSMP, Glossary, No. 37, p. 112).

13
14 Intervenors and cross-appellants contend that the whole of Discovery
15 Bay, including the proposed net pen site is an estuary. We disagree.
16 The definition in the CCSMP specifically limits an estuary to a river
17 valley or its delta.^{2/} While certain streams or rivers empty into
18 Discovery Bay, we do not find this sufficient to deem the entire Bay
19 "a river valley". Moreover, the CCSMP definition of estuary requires
20 freshwater to be mixing with and measureably diluting seawater.
21 Salinity comparisons between the site in Discovery Bay and a control
22 point out of the Bay in the Strait of Juan de Fuca do not support the
23 existence of such mixing in any material sense. As measured in parts

24
25 ^{2/} The Department of Ecology guideline for master programs is in
accord. It declares: "An estuary is that portion of a coastal stream
... ". WAC 173-16-050.

1 per thousand during July through October, 1987, and June of 1988,
2 surface salinity at the site averaged 30.7 versus 30.66 in the
3 Strait. Similarly, there are minimal differences in salinity between
4 various depths at the site, either considered alone or by comparison
5 with the Strait. Lastly, there has been no evidence to indicate any
6 difference in habitat quality between the proposed net pen site and
7 the greater saltwaters of the Strait. The proposed net pen site is
8 not located within an estuary.

9 XXXV

10 Provisions of the Shoreline Master Program at Issue. The
11 Clallam County Shoreline Master Program defines "Aquaculture" as:

12 Aquaculture is the farming or culturing of game and
13 food fish, or aquatic plants and animals in fresh or
14 salt water areas, and may include such developments as
15 fish hatcheries, rearing pens, shorebased structures
16 and shellfish rafts. Excluded from this definition is
17 the private husbanding or harvesting of anadromous
18 fish, as prohibited by Washington State Law.

19 Aquaculture practices pertain to any activity directly
20 related to growing, handling or harvesting of
21 aquaculture produce, including but not limited to,
22 propagation, enhancement and rehabilitation of said
23 fisheries resources. Excluded from the definition are
24 related commercial uses such as wholesale and retail
25 sales, processing, packaging or freezing facilities.

26 (CSSMP, Section 5.02A, p. 42, emphasis added).

27 XXXVI

28 The site of the proposed salmon net pens is designated
29 "Conservancy". CCSMP Designation of Environments, p. 119.

30 FINAL FINDINGS OF FACT,
31 CONCLUSIONS OF LAW AND ORDER

32 SHB Nos. 88-4 & 88-5 (20)

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BEFORE THE SHORELINE HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
DENIED BY CLALLAM COUNTY TO
JAMESTOWN KLALLAM TRIBE and
SEA FARM OF WASHINGTON,

SHB Nos. 88-4
and 88-5

JAMESTOWN KLALLAM TRIBE, and
SEA FARM OF WASHINGTON,

Appellants,

and

STATE OF WASHINGTON, DEPARTMENT
OF NATURAL RESOURCES and
DEPARTMENT OF AGRICULTURE,

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

Intervenors,

v.

CLALLAM COUNTY,

Respondent,

and

SAVE DISCOVERY BAY and GUNSTONE
FAMILY,

Intervenors and
Cross Appellants.

On May 20, 1988, appellants filed their Motion for Partial Summary Judgment in the above matter. On June 9, 1988, intervenors and cross appellants filed their Reply to appellant's motion and also filed a Cross Motion for Summary Judgment. On July 13, 1988, appellants filed their response to intervenors' and cross appellants' Motions for Summary Judgment.

Having considered these together with the following:

1. Appellants' memorandum filed May 20, 1988.
2. Affidavit of Dr. John Forster dated May 13, 1988, with attachments thereto.
3. Affidavit of Jack Rensel dated May 16, 1988, with attachments thereto.
4. Intervenors and cross appellants' memorandum filed June 9, 1988.
5. Affidavit of Betty Joyce Enbysk dated June 7, 1988, with attachments thereto.
6. Affidavit Robert I. Meinig, dated June 8, 1988.
7. Memorandum of appellants in response to cross motion for summary judgment filed June 14, 1988,

together with the records and files herein, and being fully advised the Board now concludes as follows:

1. Commercial Development or Feed Lot.

Under the Clallam County Shoreline Master Program (CCSMP),

1 aquaculture is an authorized activity in a conservancy environment
2 while commercial developments and feed lot operations are not
3 permitted:

4 Permitted uses are: timber harvesting on a sustained
5 yield basis, agricultural uses such as pasture and range
6 lands and aquaculture. Uses not permitted area: the
7 removal of sand and gravel from marine beaches, rivers,
streams and creeks; mining; commercial and industrial
developments, ports, feed lot operations, log booming
and marinas.

8 CCSMP, Sec. 3.03 C. 1. Emphasis added.

9 We hold that the proposed net pen facility is neither a commercial
10 development nor a feed lot within the meaning of the CCSMP. Moreover,
11 we hold that the proposed net pen facility is aquaculture under the
12 CCSMP, and should be reviewed under the standards relating to
13 aquaculture.

14 Commercial Development.

15 Appellants have filed the affidavit of Dr. John Forster which
16 states that:

17 There will be no retail or wholesale sale of fish
18 at the net-pen site or in any element of the operation
19 for which we are requesting permit approval. We will
strictly culture and raise fish at the net pens.

20 Affidavit, page 4, paragraph 4.

21 Dr. Forster is the President of appellant, Sea Farms of Washington.
22 From this uncontroverted affidavit we conclude that there is no
23 proposal for wholesale and retail trade or other business activity
24

within the net pen proposal before us for review. As such, the proposed development does not qualify as commercial development under the CCSMP definition:

The CCSMP concisely defines commercial development.

Commercial developments are those uses which involve interchange of goods, wares or commodities such as wholesale and retail trade or other business activities requiring structures ranging from small businesses within residences to large buildings. Agricultural, aquacultural, or forest management practices not requiring structures are excluded from this definition.

CCSMP Sec. 5.04 A. Emphasis added.

Perhaps more importantly, the CCSMP defines aquaculture as follows:

Aquaculture is the farming or culturing of game and food fish, or aquatic plants and animals in fresh or salt water areas, and may include such developments as fish hatcheries, rearing pens, shorebased structures and shellfish rafts. Excluded from this definition is the private husbanding or harvesting of anadromous fish, as prohibited by Washington State Law. Aquaculture practices pertain to any activity directly related to growing, handling, or harvesting of aquaculture produce, including, but not limited to, propagation, enhancement and rehabilitataion of said fisheries resources. Excluded from this definition are related commercial uses such as wholesale and retail sales, processing, packaging or freezing facilities.

CCSMP, Sec. 5.02 A. Emphasis added.

This specific definition at Sec. 5.02 A. takes precedence over the general definition of commercial development, at Sec. 5.02 A., above, where the subject is aquaculture. Again, there are no wholesale or retail sales or activity beyond culturing and raising fish to render

the proposal commercial. Rather, the proposal falls within the specific definition for aquaculture. Such definition allows structures such as net pens, and therefore does not prohibit all structures. A shoreline master program is to be construed so that no portion is rendered meaningless or superfluous. See Stone v. Sheriff's Dept., 110 Wn.2d (1988). Such a careful reading of the CCSMP resolves any apparent inconsistency. See Bellevue v. Mociulski, 51 Wn. App. 855, 859 (1988).

As we noted in Cruver v. San Juan County and Webb, SHB No. 202 (1976) the proposal is for "growing and harvesting a crop, akin to agriculture, the step before wholesale." Accord Penn Cove Seafarms v. Island County, SHB No. 84-4 (1984) and Holland v. Kitsap County, SHB No. 86-22 (1987). Summary judgment should be granted for appellants that the proposed development is for aquaculture, not commercial development.

Feed Lot.

We find no merit in the characterization of the proposal as a feed lot in as much as the CCSMP definition of aquaculture specifically contemplates farming or culturing fish in rearing pens, Sec. 5.02 A. above, and the CCSMP then goes on to make aquaculture a permitted use. Sec. 3.03 C. 1. above. This specific regulatory scheme prevails over an analogy to traditional, land based feed lots. Summary judgment should be granted for appellants that the proposed development is for aquaculture, not a feed lot.

2. Floating Home.

The Clallam County Shoreline Master Program (CCSMP) defines a floating home as:

A floating structure used in whole or in part for human habitation as a dwelling unit, and which is moored, anchored or otherwise secured in the waters.

CCSMP, Glossary, item 41. Emphasis added.

Appellants have filed the affidavit of Dr. John Forster which states that:

We propose to construct a small 10 foot by 12 foot by 10 foot high shelter at the net pen location for maintaining our administrative operation at the site, storing necessary equipment and providing a covered shelter for employees to be protected from inclement weather. We will need to constantly monitor the fish activities and protect our investment on a 24-hour basis. No persons will be living at the site and our personnel will rotate frequently for these after-hour duties. We have similar shelter and work arrangements at our net-pen operation in Port Angeles.

Affidavit, page 4, paragraph 5.

Dr. Forster is the President of appellant, Sea Farms of Washington. From this noncontroverted affidavit we conclude that the proposed shelter would not be a dwelling unit but a security shelter incidental to the net pen operation. In reaching this conclusion we are cognizant of the likelihood that the shelter may contain eating or sanitary facilities. Yet it is not the facilities which classify the structure, but its use. Here the structure is to be used to provide security for the net pens. Such a de minimis structure is incidental

to the water dependent aquaculture use. See also Department of Ecology v. City of Tacoma and Hugh Barden, SHB Nos. 83-42 and 84-27 (1985) pp. 3 and 11. Summary judgment should be granted for appellants that the proposed security shelter is a structure incidental to aquaculture, and is not a floating home.

3. Segmentation

Whether the shore-based operations attendant to the proposed development was properly segmented was addressed by appellants' affidavit. However, all facts and reasonable inferences must be construed in favor of the non-moving party in summary judgment. Turngren v. King County, 104 Wn. 2d 293, 312, 705 P.2d 258 (1985). In doing so we conclude that genuine issues of material fact persist and that summary judgment should be denied.

4. Estuary.

Opposing affidavits filed herein establish genuine issues of material fact, and summary judgment should be denied.

5. Procedure in Issuance of DNS.

For the same reasons as set forth in paragraph 3. above, summary judgment should be denied.

6. County Proceedings: Alleged lack of right to Cross-Examination and alleged violation of the Appearance of Fairness Doctrine.

Each of these issues are beyond the scope of the Pre-Hearing Order

entered March 25, 1988. That Order limited the subsequent course of the proceedings to the issues set forth therein. For this reason the above issues are barred. See Kitsap County v. Natural Resources, 99 Wn. 2d 386, 389, 662 P.2d 381 (1983).

Had these issues been included in the Pre-Hearing Order, we would decline to resolve them in any event. The hearing before the Board is de novo. San Juan County v. Natural Resources, 28 Wn. App. 796, 626 P.2d 995 (1981). Because of de novo review we can provide adequate procedural safeguards without considering an appearance of fairness claim raised against local officials. Washington Environmental Council, et. al. v. Douglas County, et. al., SHB Nos. 86-34, 86-36 and 86-39 (1988). The same is true as to a claim that cross examination was not allowed in local proceedings. This form of review enhances the consideration of each case on its merits.

7. Cross Motion for Summary Judgment.

The Cross-Motion for Summary Judgment filed by Intervenors/Cross-Appellants on June 9, 1988, does not violate the Pre-Hearing Order. Such Cross-Motions were limited to the issues raised by appellants' Motion for Partial Summary Judgment filed May 20, 1988. The effect is merely to allow entry of judgment for the non-moving party where appropriate as a matter of law. That procedure is correct even without Cross-Motion. See generally, Orland, Wash. Rules Practice (1983) Sec. 5656, p. 442 and cases cited therein.

WHEREFORE IT IS ORDERED:

1. Summary Judgment is granted to appellants that the proposed development is aquaculture, not commercial development and not a feed lot.

2. Summary Judgment is granted to appellants that the proposed security shelter is a structure incidental to aquaculture and not a floating home.

3. Summary Judgment is denied as to all other issues for which it was sought, except the issues of cross examination and appearance of fairness in County proceedings which are barred.

DONE at Lacey, Washington, this 29th day of July, 1988.

SHORELINE HEARINGS BOARD

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Administrative Appeals Judge

ORDER ON MOTIONS
FOR SUMMARY JUDGMENT
SHB Nos. 88-4 & 88-5